No. 80-1394

In the Supreme Court of the United States

OCTOBER TERM, 1980

EMMETT C. WILSON, JR. and VERNA I. WILSON,
Appellant,

vs.

CALIFORNIA HEALTH FACILITIES COMMISSION,
Defendant and Appellee.

On Appeal from the Supreme Court of the State of California

Motion to Dismiss or Affirm

GEORGE DEUKMEJIAN
Attorney General of the
State of California

THOMAS E. WARRINER
Assistant Attorney General

CHARLTON G. HOLLAND
Deputy Attorney General
Attorneys for Defendant and Appellee

Counsel of Record:

RALPH M. JOHNSON
Deputy Attorney General
6000 State Building
San Francisco, CA 94102
Telephone: (415) 557-1139

BORG PRINTING COMPANY OF CALIFORNIA, 346 FIRST STREET, SAN FRANCISCO 94105

TABLE OF CONTENTS

Page

Table of Contents i

Table of Authorities ii

Motion To Dismiss Or Affirm 1

I. The State Statute Involved And The Nature Of The Case 1

A. The Statute 1

B. The Proceedings Below 2

II. Argument 3

III. Conclusion 7

TABLE OF AUTHORITIES

Cases

	Pages
Bates v. City of Little Rock, 361 U.S. 516, 522-523 (1960)	3
Couch v. United States, 409 U.S. 322, 335-336 (1972)	4
Griswald v. Connecticut, 381 U.S. 479, 492-493 (1964)	4
Havas v. Thorton, 609 F.2d 372, 375-376 (9th Circuit 1979)	6
NAACP v. Alabama, 357 U.S. 449, 462 (1958)	3
Paul v. Davis, 424 U.S. 693, 712-713 (1975)	6
Plante v. Gonzalez, 575 F.2d 1119 (5th Circuit 1978)	4
Roe v. Wade, 410 U.S. 113, 152-154 (1972)	3
Taormina v. Antelope Mining Corp., 110 Cal.App.2d, 314; 242 P.2d 665 (1952)	2
United States v. Choate, 576 F.2d 165, 173-175 (9th Circuit 1978)	4
United States v. Miller, 425 U.S. 435, 442, 443 (1976)	4
Whalen v. Roe, 429 U.S. 598, 597, 599-600, 604 (1976)	3, 5

UNITED STATES CONSTITUTION

	Pages
Amendment IV, U.S. Const.	3, 4
Amendment V, U.S. Const.	3, 4
Amendment IX, U.S. Const.	4
Amendment XIV, U.S. Const.	3

STATUTES AND ACTS

California Health and Safety Code:	
Section 440, *et seq.*	1
Section 441	6
Section 442(a)	2
California Health Facilities Disclosure Act	2, 6
California Medicaid Program, Title XIX of the Social Security Act	5
California Statutes 1971 Ch. 1242, p. 2418	2
California Statutes 1974 Ch. 1171, p. 2511	2

No. 80-1394

In the Supreme Court of the United States

OCTOBER TERM, 1980

EMMETT C. WILSON, JR. and VERNA I. WILSON,
Appellant,

vs.

CALIFORNIA HEALTH FACILITIES COMMISSION,
Defendant and Appellee.

On Appeal from the Supreme Court of the State of California

Motion to Dismiss or Affirm

The appellee moves the Court to dismiss the appeal herein or, in the alternative, to affirm the decision of the Court of Appeals, First Appellate District, State of California on the ground that the question on which the decision for the cause depends is so unsubstantial as not to need further argument.

I

THE STATE STATUTE INVOLVED AND THE NATURE OF THE CASE

A. The Statute

This appeal raises the question for the validity of a certain portion of the California Health Facilities Disclosure Act, California Health and Safety Code sections 440

et seq., and specifically section 442(a) thereof. These statutes were initially enacted in 1971 (California Statutes 1971, Ch. 1242, p. 2418) and applied solely to hospitals. However, effective July 1, 1975, this Act was amended to include all licensed health facilities (California Statutes 1974 Ch. 1171, p. 2511) thus affecting appellants herein.

This Act, as amended, provides that every health facility shall submit annual reports to the California Health Facilities Commission which set forth specified financial data concerning the health facility's operations. The Act requires these reports to be on forms supplied by the Commission and in accord with uniform accounting and reporting systems developed by the Commission.

Section 442(a) requires the Commission to maintain these reports and, subject to such rules as the Commission may prescribe, produce these reports for inspection upon the demand of any person.

B. The Proceedings Below

The appellant, after the effective date for the 1974 amendments to the Act, instituted this action contending the California Health Facilities Disclosure Act was invalid under the California and Federal Constitutions as violative of a right of privacy insofar as the Act allows public inspection of the financial reports submitted to the Commission. The Superior Court of California in and for the City and County of San Francisco, by its Judgment filed October 23, 1978, upheld the validity of the Act and denied appellant the relief sought. Upon appeal to the Court of Appeals, First Appellate District, the decision of the trial court was affirmed, 110 Cal.App.3d 317. The Supreme Court of California denied a hearing on November 19, 1980.

II

ARGUMENT

This Court has recognized a right of privacy that is founded upon the Fourteenth Amendments' concept of personal liberty and restriction on state actions. *Roe v. Wade,* 410 U.S. 113, 152-154 (1972). However, this privacy right is not absolute, and is balanced against legitimate state interests in safeguarding health and safety, *Ibid.;* in such cases the state is accorded wide latitude in experimenting with possible solutions to problems of vital local concern. *Whalen v. Roe,* 429 U.S. 598, 597 (1976).

The types of interest protected by the privacy right have been characterized as protection from governmental intrusion and independence in making decisions dealing with matters relating to marriage, procreation, contraception, family relationships, child rearing and education. *Whalen v. Roe, supra, Id.,* at 599-600.

This first type of interest is exemplified by decisions of this Court recognizing privacy interest in order to protect freedom of association, *Bates v. City of Little Rock,* 361 U.S. 516, 522-523 (1960); *NAACP v. Alabama,* 357 U.S. 449, 462 (1958). These cases recognized this privacy interest in order to promote the advancing of ideas and airing grievances. *Whalen v. Roe, supra,* 604 n. 32.

It is inconceivable that any reasonable argument can be made that public disclosure of the financial statistical data contained in the cost reports involved any cognizable associational interest.

Furthermore, this type of interest is exemplified by analysis of Fourth and Fifth Amendment cases.

This Court has held that for a right of privacy to arise by virtue of the Fourth Amendment, there must be governmental intrusion upon an interest in which there is a legiti-

mate expectation of privacy. *United States v. Miller,* 425 U.S. 435, 442, (1976).

In *Miller,* it was held there was no legitimate expectation of privacy in checks and deposit slips of a depositor/customer of a bank. This Court held that the depositor takes the risk in revealing his affairs to another, that the information will be conveyed to the government. *United States v. Miller, supra,* 443. It is inconceivable that submitting financial records *directly* to the government gives rise to any legitimate Fourth Amendment interest. cf. *Couch v. United States,* 409 U.S. 322, 335-336 (1972), (wherein it was held there is no Fourth or Fifth Amendment interest and therefore no right of privacy in financial records turned over to an accountant knowing that mandatory disclosure of much of the information is required in an income tax return); *United States v. Choate, supra,* 576 F.2d 165, 173-175 (9th Circuit 1978), no legitimate expectation of privacy in the information contained on the outside of mail. See also, *Plante v. Gonzalez,* 575 F.2d 1119 (5th Circuit 1978), mandatory financial disclosure for elected officials in Florida did not unconstitutionally violate any right of privacy.

Furthermore, as set forth above, this Court has held there is no legitimate Fifth Amendment interest in financial records turned over to an accountant realizing that the information would be disclosed to the government in the filing of a tax return. *Couch v. United States, supra.* It is as inconceivable under a Fifth Amendment analysis as under a Fourth Amendment analysis that a protected constitutional interest arises if the information is submitted directly to governmental authorities.

Finally, in his concurring opinion in *Griswald v. Connecticut,* 381 U.S. 479, 492-493 (1964), Justice Goldberg recognized a privacy interest arising out of the Ninth

Amendment that prohibited governmental intrusion into the sanctity of the marital relationship. No such interest is involved in these statistical financial reports.

The second type of privacy interest has arisen in circumstances wherein this Court has protected the decision making in matters dealing with marriage, procreation, contraception, family relationships, child rearing and education. *Whalen v. Roe, supra.* The public inspection of statistical financial reports simply does not invoke any such decision or decision making process.

This appeal involves no cognizable privacy interest. Appellant readily concedes the legitimacy of providing these reports to the state. There is no contention that patients, physicians or any patient family members would suffer any detriment by the public disclosure of these reports. In fact, such persons would benefit from disclosure.

Moreover, there is no cognizable harm to appellant from such disclosure. These reports contain financial statistical data limited solely to the operations of the health facility. There can be no diminution of a facilities competitive position *viz a viz* other providers since the reports of all health facilities are subject to public inspection. Moreover, the data required to be reported is limited to the costs of operating the facility and does not, in any significant manner, expose the purely personal finances of appellant to public perusal. The sole contention of this appeal is that the state is absolutely prohibited from allowing public inspection of these cost reports, notwithstanding the conceded fact that the state may legitimately require these reports and make full use of them in its routine regulatory functions, which include the setting of reasonable rates for reimbursement for those health facilities providing services pursuant to California's Medicaid, Title XIX of the Social Security Act, Program.

Such a contention is far afield from the interests recognized by this Court and is analogous to the claim rejected in *Paul v. Davis,* 424 U.S. 693, 712-713 (1975), holding there is no privacy interest prohibiting a state from publicizing an arrest. See also, *Havas v. Thorton,* 609 F.2d 372, 375-376 (9th Circuit 1979), there is no privacy interest prohibiting a state from instituting a civil action for alleged deceptive or misleading advertising, false and deceptive trade practices and making unauthorized repairs to a motor vehicle.

Moreover, the primary purpose in enacting the Health Facilities Disclosure Act was to make available to the public the highest level of health services through the public's informed ability to obtain these services. California Health and Safety Code section 441. This important state interest manifestly outweighs any interest appellants, as operators of a 360 patient hospital, have in shielding the costs of operating this hospital from public inspection.

The financial data disclosed in the costs reports is limited solely to the operations of the health facility and the public disclosure of such data serves as an innovative method of furthering an important state interest.

III

CONCLUSION

THEREFORE, appellee respectfully submits that the question upon which this cause depends is so unsubstantial as not to need further argument, and appellee respectfully moves the Court to dismiss this appeal, or in the alternative, to affirm the decision of the Court of Appeals, First Appellate District, State of California.

Respectfully Submitted,

GEORGE DEUKMEJIAN
Attorney General of the
State of California

THOMAS E. WARRINER
Assistant Attorney General

CHARLTON G. HOLLAND
Deputy Attorney General

By RALPH M. JOHNSON
Attorneys for Defendant and Appellee